IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 4336 of 2007(N)

PETITIONER:

RAHUL ANTONY SIMON,
28/3113, PONNETH TEMPLE ROAD,
KADAVANTHARA,
COCHIN.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENTS:
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1. MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS VICE CHANCELLOR,
ATHIRAMPUZHA, KOTTAYAM.

2. CONTROLLER OF EXAMINATIONS,
MAHATMA GANDHI UNIVERSITY,
ATHIRAMPUZHA, KOTTAYAM.

3. MOSC MEDICAL COLLEGE,
REPRESENTED BY ITS PRINCIPAL,
KOLENCHERY- 682 311.

BY ADV. SRI.ALEXANDER THOMAS, SC, MCI
SRI.TONY GEORGE KANNANTHANAM
SRI. T.A. SHAJI, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/2007, ALONG WITH WPC NO. 16723 OF 2007 THE COURT ON 14/12/2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.4336/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT DT. 20.9.06 IN WPC. NO.22952/06.

EXT.P2:- COPY OF THE INTERIM ORDERS PASSED BY THE LEARNED SINGLE JUDGE DT.12.12.2006 IN WPC. 32921/06.

EXT.P3:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WA. 2365/06 DT. 14.12.06.

EXT.P4:- COPY OF THE LETTER OF AUTHORIZATION GRANTED BY THE 3RD RESPONDENT DT. 18.12.06 AND NUMBERED AS MOSC/MC/A4-47/06.

EXT.P5:- COPY OF THE MCI REGULATION.

EXT.P6:- COPY OF THE UNIVERSITY REGULATION.

EXT.P7:- COPY OF THE MARK LIST ISSUED TO ME IN THE MAIN EXAM HELD IN NOVEMBER 2005.

ANNEXURE – I:- COPY OF THE RELEVANT PAGE OF THE M.B.B.S REGULATION.DT. 22.2.07

ANNEXURE II:- COPY OF THE LETTER OF THE COLLEGE DT. 18.12.06.

/TRUE COPY/

P.A. TO JUDGE

tss

ANTONY DOMINIC, J.

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W.P.(C) NO.4336 & 16723 OF 2007

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Dated this the 14th day of December, 2007

J U D G M E N T

WPC No.4336/2007

The petitioner joined MBBS course in the 3rd respondent College in 2002. The petitioner appeared for the IInd MBBS examination held in November 2005 and when results were published on 23.02.2006, he had failed in Forensic Medicine. Immediately, on 01.03.2006 he applied for scrutiny and revaluation of the answer sheet. In view of the inordinate delay on the part of the University in this behalf, he filed W.P.(C)No. 22952 of 2006 before this Court, which was disposed of by Ext.P1 judgment directing that revaluation shall be completed and results declared as expeditiously as possible, at any rate within one month from the date of receipt of a copy of this judgment. It is stated that by order dated 06.12.2006 the period prescribed in Ext.P1 judgment was got extended by the University by one month, but however, on 07.12.2006, petitioner was informed that his answer sheet was revalued and that there was no change in the results.

2. By the time the results were thus informed, the date for applying for the supplementary examination for Forensic Medicine had expired and therefore the petitioner was unable to appear for the exam that was scheduled to be held on 18.12.2006. In the meantime, though the petitioner had applied to appear for the final MBBS Part I examination, hall ticket for the exam was not issued as he had not cleared his paper in forensic medicine. In the circumstances, petitioner filed W.P.(C)No. 32921 of 2006 before this Court praying for directing that he should be permitted to appear for the final year MBBS Exam Part I and for the supplementary exam for forensic medicine. In that writ petition Ext.P2 interim order was passed permitting the petitioner to appear for the supplementary examination for forensic medicine.

3. Ext.P2 order, in so far as it did not permit him to appear for final year examination was challenged in W.A.No. 3265 of 2006. The writ appeal was disposed of by Ext.P3 judgment directing that the petitioner be provisionally permitted to write the final year Part I examination, along with the supplementary examination for forensic science. However, it was ordered that the final year Part I results

will be published only if the petitioner passes the supplementary examination in forensic medicine.

4. Accordingly, petitioner appeared for both the examinations. However, the University informed him that his answer paper for the supplementary examination will not be evaluated and there upon this writ petition was filed for a direction to the university to evaluate and publish the results of forensic medicine in the supplementary examination held on 18.12.2006. There is a further prayer to direct the respondents to publish the result of the final year MBBS Examination held on 19.12.2006.

5. On behalf of respondents 1 and 2, a statement was filed, in which it is contended that as per MBBS Regulation, a failed candidate has to undergo further study including hospital posting/ practical work in the subject concerned for the period between the last examination in which they had failed and the next succeeding examination, which shall not be less than one semester. Annexure I is the Regulation that is relied on by the university, the relevant portion of which is extracted below for reference:

> "In the case of candidates who fail at the M.B.B.S examinations or having applied for admission do not appear

> for the examination or having obtained the prescribed certificate, do not apply for admission to the examination although qualified to do so, shall be required to produce a certificate of further study including hospital posting/ practical work in the subject concerned for the period between the last examination at which they had failed or not appeared and the next succeeding examination, which shall not be less than one semester. In the case of candidates who do not appear for the next succeeding examination, the period of further study shall be decided by the Principal of the College concerned, provided that such study does not exceed two terms. No candidate shall be admitted to the examination unless he/ she has produced satisfactory evidence of having complied with the provisions contained in the regulations and has produced the prescribed certificates of study".

University contended that the Principal of the 4th respondent college had by Annexure II letter informed that the petitioner had not attended any Lecture/ practical class or internal examination. On this basis, it is argued that so long as the petitioner has not complied with Annexure I and produced a certificate of further studies, he is not entitled to get the answer papers of the Supplementary Examination valued or the result of the final year part I examination declared.

6. The petitioner thereupon filed 2 interlocutory applications. In I.A.No.3713 of 2007 petitioner sought an

amendment to the writ petition, producing the aforementioned regulation of the University as Ext.P6 and seeking to quash the same. According to him the certificate of further study is applicable only in respect of the students undergoing final year examination and that, otherwise, the regulation is unworkable. He also contended that Ext.P6 Regulation is unconstitutional in as much as it runs counter to the Medical Council of India Act and the Regulations framed thereunder, which governs the field of medical education in the country. By I.A. No.3714 of 2007 petitioner also sought the impleadment of Medical Council of India as additional 4th respondent. These IAs were allowed by order dated 12.03.2007 and subsequently by order dated 20.03.2007 it was directed that his answer paper in Forensic Science will be evaluated and results published provisionally. Petitioner also filed a reply affidavit answering the contentions of the University and reiterating that Ext.P6 would lead to absurd results, and that it is opposed to the regulations of the Medical Council of India and at best, it is applicable to the first year or final year MBBS students.

7. The counsel for the petitioner reiterated the contentions

urged in the writ petition and the learned counsel for the University and the Medical Council of India sought to justify their respective positions. Having heard both sides, I think that the main issue that is required to be examined is whether Ext.P6 regulation framed by the 1st respondent University is legal or not? If my answer to this question is in the affirmative, the requirement of producing further study certificate has to be upheld. On the other hand, if the petitioner's contention is accepted, the impugned proceedings of the University will naturally stand set aside.

8. The Medical Council of India has been set up to lay down the minimum standards in medical education and regulate their observance, by virtue of the provisions contained in the Indian Medical Council Act, 1956. Regulations have been framed by MCI with the previous sanction of the Central Government in regard to the matters that are referred to in Section 33 of the Act. These regulations have statutory force and are mandatory in nature. The universities must necessarily be guided by the regulations and any regulation framed by the University, which is inconsistent with the MCI regulations or which the dilute the criteria laid down by the

MCI, will not be valid to that extend. This legal position has been accepted and reiterated by the Apex Court in the decisions reported in State of Tamil Nadu v. Adhiyaman Educational and Research Institute reported in 1995 (4) SCC 104, Medical Council of India v. State of Karnataka reported in 1998 (6) SCC 131, Dr. Preeti Srivastava v. State of Madhya Pradesh reported in 1999 (7) SCC 120, and Maharashtra University of Health Sciences v. Paryani Mukesh Jawaharlal reported in AIR 2007 S.C. 2264. It necessarily follows that if Ext.P6 is inconsistent with any regulation that is framed by the MCI, it will be void to that extend and it will be valid and binding only if it is implements or makes it explicit what is implicit in the MCI Regulations.

9. In exercise of the power under Section 33 of the Act, the MCI have framed regulations on Graduate Medical Education in 1997. Though this regulation makes detailed provisions for the examination regulations also, there is no requirement that a failed student shall be required to produce a certificate of further study including hospital posting /practical work in the subject concerned for the period between the last examination at which they had failed

and the next succeeding examination, which shall not be less than one semester. To a specific question that was asked to the counsel for the MCI his answer was that there is no regulation framed by the MCI similar to Ext.P6. He would further clarify that in the absence of such regulations framed by the MCI, it is within the domain of the university to insist whether a student should produce a certificate as prescribed in Ext.P6.

10. The counsel for the petitioner has referred me to the judgment of a Learned Single Judge in W.P.(C)No. 23317 of 2004 and connected cases. That was a case where the students had failed in some of the papers in the first professional MBBS examination and when they applied for appearing for the examination again, the University took stand that they can be permitted to take the examination only if they attend classes for a period having a duration of one semester between the date of publication of the result of the examination and the date of next examination. The University justified the said contention relying on Ext.P6 Regulations.

11. The petitioners in that case contended that in the

Medical Council of India (Graduate Medical Education) Regulation 1997, there was no stipulation that the students should undergo further training to appear for the supplementary examination. The MCI had filed a counter affidavit in that case supporting the stand of the petitioner. The respondent University which was the respondent in that case, had contended that the regulations of the MCI laid down only the minimum qualification and will not stand in the way of the University prescribing higher qualifications to appear for the supplementing examination. Dealing with the contention of the parties as above, the learned judge held as follows:

> "But, I find considerable force in the submission of the petitioners that the University cannot prescribe a qualification, which is at variance with the MCI Regulations, for the purpose of taking the supplementary examination. The field is already occupied by the MCI Regulations. As per the said Regulations, every candidate, who failed in an examination, is entitled to take the subsequent examination and the University should give such candidates, a chance to take the supplementary examination, at least, within six months. Without doing violence to this Regulation, the impugned regulation of the University cannot be implemented. Assuming the results will be published within two months, the time gap between the main and the supplementary examinations will be 8 months as the duration of a semester is 6 months. In this case, the results were published only after 5 months. So, the

> petitioners can acquire eligibility, only after 11 months, as per the University Regulations. When the field is already occupied by the Regulations framed by the Medical Council of India with the previous sanction of the Central Government, the University cannot displace the same by framing the Regulations, under the provisions of the M.G. University Act.
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> Going by the decisions cited by both sides. I feel that only for the purpose of admission to various courses, the concerned State Government or the University may prescribe higher qualifying marks. But, regarding the conduct of the examination and the eligibility to take such examination, the University cannot bring in any new or different stipulation. The justification of such different stipulation on the ground that it is something higher and therefore, permissible, cannot be accepted. There is no decision of this Court or that of the Apex Court, dealing with the prescription of eligibility criteria for taking the supplementary examination. The decisions cited above, do not apply directly to the facts of this case. In any view of the matter, the impugned regulation of the University should be read down as mandating the students to undergo further instruction/ training for the period from the publication of the results to the date of the next supplementary examination".

A reading of the above judgment thus show that the Learned Single Judge was interpreting Ext.P6 regulation and dealing with grievances which are similar in nature. It is in this background the Learned Judge held that the justification for a different stipulation on the ground that it is something higher and therefore permissible

cannot be accepted. The reasoning of the Learned Single Judge is that the field of medical education is governed by the provisions contained in the Medical Council of India Act and the Regulations and the universities are bound by the Regulations. On this basis it is concluded that if the university frames something which is against the regulations framed by the MCI, to that extend the regulations framed by the university is illegal and ultra-vires. This reasoning of the Learned Single Judge is also consistent with the law as laid down by the Apex Court in the judgments referred to hereinabove. This judgment has been upheld by the Division Bench in its judgment in WA No.377/06. In view of this, the contention of the University relying on Ext.P6 cannot be accepted.

12. Although, various other contentions were raised including whether the student is required to obtain marks for internal assessment during the course of his further studies, in view of the above, I do not think these issues call for examination in this matter.

13. However in the case dealt with Learned Single Judge there was no challenge to Ext.P6 Regulation and it was therefore

that the Learned Judge read it down in the manner as indicated above. In this case, the petitioners have challenged Ext.P6 Regulation. As the Learned Single Judge has found, which I also respectfully follow, Ext.P6 regulation is contrary to the regulations framed by the MCI and if that be so, the regulation framed by the University cannot be legally sustained and for that reason Ext.P6 is liable to be declared illegal and I do so. Once Ext.P6 is declared illegal, the very basis on which the University refused to evaluate the answer papers of the petitioner in the supplementary examination that he had not obtained a further course certificate as prescribed in Ext.P6, also has to be declared to be illegal.

14. Consequently, I dispose of this writ petition quashing Ext.P6 and directing that the evaluation and publication of the results of the petitioner for forensic medicine in the Supplementary Examination held on 18.12.2006 be treated as regular and further that the results of the petitioner for MBBS Part I Examination held on 19.12.2006 shall be published. The writ petition is allowed in the above terms.

W.P.(C)No. 16723 of 2007

15. In W.P.(C)No.16723 of 2007, the prayer of the petitioner is to permit him to appear for the final year MBBS examination held in June 2007. In this case by order dated 05.06.2007, this court had directed the university to permit the petitioner to write the examination on a provisional basis and subject to the result of the writ petition. The contention of the petitioner is that he was not permitted to appear for the said examination for the reason that he had not successfully completed his paper in forensic science.

Now that in W.P.(C)No.4336 of 2007, I have set aside Ext.P6 Regulation and granted relief to the petitioner, this writ petition is also liable to be allowed. Accordingly, I dispose of this writ petition directing that the respondents shall evaluate and publish the result of the final year MBBS examination in which the petitioner had appeared by virtue of the interim order dated 05.06.2007 and the results shall be published as expeditiously as possible.

ANTONY DOMINIC, JUDGE

Rp